

Doc Code: AP.PRE.REQ

PTO/SB/33 (07-05)

Approved for use through xx/xx/200x. OMB 0651-00xx  
U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

## PRE-APPEAL BRIEF REQUEST FOR REVIEW

Docket Number (Optional)

89296.0025

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to "Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450" [37 CFR 1.8(a)] transmitted via electronic filing on May 22, 2007

Signature [Signature]

Typed or printed name Rose Hickman Reg. No. 54,167

Application Number

10/711,218

Filed

09-02-2004

First Named Inventor

Frank Sterns

Art Unit

2615

Examiner

Huyen D. Le

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a notice of appeal.

The review is requested for the reason(s) stated on the attached sheet(s).  
Note: No more than five (5) pages may be provided.

I am the

- ☐ applicant/inventor.
- ☐ assignee of record of the entire interest.  
See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed.  
(Form PTO/SB/96)

☒ attorney or agent of record.  
Registration number 54,167

☐ attorney or agent acting under 37 CFR 1.34.

Registration number if acting under 37 CFR 1.34 \_\_\_\_\_

[Signature]  
Signature

Rose A. Hickman

Typed or printed name

(310) 785 4796

Telephone number

May 22, 2007

Date

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below\*.

☒ \*Total of 1 forms are submitted.

This collection of information is required by 35 U.S.C. 132. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11, 1.14 and 41.6. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of:

Frank Sterns

Serial No: 10/711,218

Filed: 09/02/2004

For: LOUDSPEAKER WITH INTEGRATED  
WOOFER FRAME AND BAFFLE  
COMPONENT

Art Unit: 2615

Examiner: Huyen D. Le

I hereby certify that this correspondence  
is being transmitted via electronic filing  
on the date indicated below to:


Mail Stop AF  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

May 22, 2007

Date of Deposit

Rose A. Hickman, Reg. No. 54,167

Name

 5/22/2007

Signature

Date

**REASONS FOR PRE-APPEAL BRIEF  
REQUEST FOR REVIEW ATTACHED TO  
FORM PTO/SB/33 AND ACCOMPANYING  
NOTICE OF APPEAL**

Mail Stop AF  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Dear Sir:

As stated on the attached Form PTO/SB/33, Applicant requests a pre-appeal brief review of the final rejection in the above-identified application. This request is being filed with a Notice of Appeal. The review is requested for the following reasons:

1. The Examiner Has Failed To Make Out A Prima Facie Case of Anticipation.

The Examiner has rejected claims 1, 7, 17, and 19 as anticipated by Ryan (US 6,766,027). All of these claims require that the woofer frame is integral with the baffle. Integrating the woofer frame and the baffle results in many advantages over prior art speaker systems, generally favoring modular and freely movable components. These are discussed in detail on p. 5 of Applicant's March 29<sup>th</sup> response and the portions of the Specification referenced therein.

The speaker system of Ryan has a conventional woofer that is separate from, and is simply mounted on or secured to, the speaker frame. See Applicant's response of October 3, 2006 for a lengthy discussion. The Examiner agrees. See, p.4

of Office action of January 29, 2007 (“the woofer frame (15) of Ryan is *attached to* the baffle (17, 19)”).

Because the Examiner has failed to show disclosure in Ryan of every element in Applicant’s independent claims 1 and 17, Applicant submits that she has failed to make out a prima facie case of anticipation. Claims 7 and 19 depend from claims 1 and 17 and are also patentable for at least this reason.

2. The Examiner’s Contention That Separate Pieces Connected Together Are Necessarily Integral Is Clearly False.

The Examiner does not contend that making the baffle and woofer frame of Ryan integral would be obvious. Rather, the Examiner’s one argument for anticipation is that separate elements connected together are necessarily “integral.” See, p. 4 of Office action of January 29, 2007 and Applicant’s Interview Summary, filed on February 12, 2007. This contention is contrary to established case law and the plain meaning of the dictionary definition. Applicant discussed the relevant case law and definition at length on pages 3 and 4 of the March 29<sup>th</sup> Response. This argument, therefore, fails to make out the Examiner’s prima facie case of anticipation.

3. The Examiner Has Failed To Make Out A Prima Facie Case of Obviousness.

Claims 2-6, 8-16, 18, and 20-22 are currently rejected as obvious over Ryan. However, Ryan also fails to teach or suggest all of the claimed limitations. As discussed in detail on pages 4-6 of the March 29<sup>th</sup> Response, Ryan teaches use of a modular, attached construction of the baffle and woofer frame, and an embodiment with a pivoting woofer speaker. The Examiner has not only failed to show where Ryan teaches or suggests that the woofer frame and baffle should be made integral, thereby avoiding the numerous advantages of this construction, but integral construction would destroy the functionality of Ryan’s pivoting woofer frame. For at least this reason, the Examiner has failed to make out a prima facie case of obviousness of Applicant’s claims 2-6, 8-16, and 20-22.

Applicant also submits that the Examiner has failed to show where Ryan teaches or suggests additional features of dependent claims 5, 12, 16, and 18, as discussed in detail on pages 5 and 6 of the March 29<sup>th</sup> Response.

For at least these reasons, Applicant requests a pre-appeal brief review of the rejections.

Respectfully submitted,

HOGAN & HARTSON L.L.P.

Date: May 22, 2007

By: 

Rose A. Hickman  
Registration No. 54,167  
Attorney for Applicant(s)

1999 Avenue of the Stars, Suite 1400  
Los Angeles, California 90067  
Phone: 310-785-4600  
Fax: 310-785-4601